

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

JAMES EVERETT SHELTON;
individually and on behalf of all those
similarly situated,

Plaintiff,

V.

**DIRECT ENERGY, LP AND KAA
ENERGY, INC.**

Defendants,

Case No. 1:19-cv-81

DECLARATION OF JAMES EVERETT SHELTON

1. My name is James Everett Shelton. I am over 18 years old. I can testify competently to the undersigned statements.

2. My cell phone number (484) 626-xxxx is on the National Do-Not-Call Registry and has been since 2015 (the “Number”). I have never removed it from the Registry. The illegal call alleged in the complaint in this case occurred while I was the sole user of this Number and paid the bill. By placing my Number on the Registry, I am explicitly informing all telemarketers that I am not interested in their calls.

3. Despite the fact that I listed the Number on the Registry, I am still inundated with illegal telemarketing calls.

4. Several years ago, when I realized that merely listing my Number on the Registry was not enough, I decided to fight back and enforce the private right of action granted consumers by Congress to allow for private enforcement of the TCPA.

5. Thereafter, I spent a significant amount of time studying the TCPA and the FCC's regulations implementing the TCPA.

6. Now, when I receive illegal calls I fight back to enforce my rights.

7. I have filed many individual claims and lawsuits over the past few years to enforce the TCPA and I am proud to have done so.

8. Telemarketers frequently personally attack me as a professional plaintiff for standing up for myself and enforcing the TCPA. I am proud to be a TCPA advocate. I am also proud to be serving in this matter on behalf of the entire class. As an aside, I operate a business and am a college student at Case Western Reserve University. My sole cellular telephone number is my main point of contact for both of those things.

9. I have agreed to serve as a class plaintiff in this case so all consumers similarly affected by the defendants' illegal conduct can obtain some relief.

10. I do not have any prior business relationship with any of the defendants in this case. I did not consent in any way to receive telemarketing calls from these defendants. Any suggestion that I have done so is false. There is no website provided in the affidavit that I could dispute attending, but I have a general practice of not visiting any websites that would allow for telemarketing calls, and that would certainly include a survey about energy.

11. In this case, I received an illegal telemarketing call promoting Direct Energy on my Number on August 24, 2018. There was a distinctive "bloop" noise at the beginning of the call and a pause before a representative came on the line. In my experience, these facts indicate the use of a predictive dialer, a type of strictly regulated Automatic Telephone Dialing System, that allows a telemarketer to call many consumers at the same time. These automatic dialing systems are strictly regulated by the TCPA.

12. In my experience, telemarketers will frequently initially lie about their true identity and will only identify themselves by their true name if the consumer feigns interest.

13. I can only enforce the TCPA if I know who is calling me.

14. I now know that the call made to me on August 24, 2018, was made by co-defendant KAA Energy, calling on behalf of Direct Energy. At no time during the call did KAA Energy identify itself.

15. Because I correctly suspected that the true identity of the caller was being withheld, I played along with the caller and feigned an interest in Direct Energy's services. I did so because in my experience, once a consumer feigns interest, a lead is then generated which identifies the calling entity. In my experience, unless I do so, there is no record of which lead generator used by Direct Energy actually called me and I do not then have sufficient evidence to enforce the law.

16. By playing along, I was able to create a paper trail that led to the identification of KAA as the entity who called me.

17. The call made to my number on August 24, 2018 was illegal as it was made to a cell phone via an Automatic Telephone Dialing System. I am only suing Direct Energy for this one call.

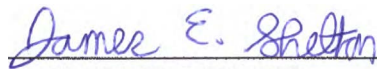
18. Direct Energy now claims that by feigning interest, I consented to the call. The call was illegal from the outset. I feigned interest only to identify the responsible parties.

19. Direct Energy notes that during the period in which I feigned interest, I did not object to the call or raise any concerns about the call. This is true. Had I done so, in my experience, the telemarketer would have hung up on me and claimed to have no record of calling me.

20. Direct Energy was offering me a fixed rate of 6.49 cents per Kilowatt Hour, which is substantially higher than what I pay on my electric bills to the Illuminating Company. As a practical matter, I would not be happy to pay *more* on my utility bills.

21. Direct Energy further claims that because I played along, I must have wanted the call and, therefore, suffered no injury. This is ridiculous. I hate telemarketing calls. They are a nuisance, an invasion of my privacy, an unauthorized use of my property, and a trespass. If I wanted telemarketing calls, I never would have listed my number on the Registry.

SWORN TO UNDER THE PAINS AND PENALTIES OF PERJURY, THIS 12TH DAY
OF FEBRUARY, 2019.



James Everett Shelton